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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-367

No. COA21-502

Filed 17 May 2022

Wake County, 17 CRS 221790-91

STATE OF NORTH CAROLINA, Plaintiff,

v.

SHAKEEVIA LAVERNE ASKEW, Defendant.

Appeal by defendant from judgments entered 26 February 2021 by Judge G. Bryan Collins in Wake County Superior Court. Heard in the Court of Appeals on 23 February 2022.

North Carolina Department of Justice, by Special Deputy Attorney General Jessica V. Sutton, for the State.

Sandra Payne Hagood, for defendant-appellant.

DIETZ, Judge.

¶ 1 Defendant Shakeevia Askew appeals her convictions for common law robbery, breaking and entering with intent to terrorize or injure, and related charges. Askew argues that the trial court committed plain error when it failed to instruct the jury that she cannot be guilty of common law robbery and the other larceny-related charges if she believed she was recovering her own property, not taking the property of another.

¶ 2 We reject this argument. As explained below, the trial court properly instructed the jury on all of the essential elements of robbery and even if the court erred by failing to give the additional instruction proposed by Askew on appeal, Askew has not met her burden to show plain error.

Facts and Procedural History

¶ 3 In November 2015, Dominique Slater agreed to give Defendant Shakeevia Askew a tattoo. In return, Slater wanted Askew to post a flyer on her social media pages about one of Slater's club promotions. Askew contends that upheld her part of the agreement but Slater never gave her the tattoo in return.

¶ 4 Askew later filed a complaint for $5,000 against Slater in small claims court. Slater failed to appear at the small claims proceeding and Askew obtained a judgment against Slater for $5,000. The sheriff's office served Slater with notice of this judgment on 9 November 2017.

¶ 5 The previous day, 8 November 2017, Slater closed his tattoo parlor, Tatu Therapy, around 6:00 p.m. in the evening. Slater and his employees returned to the shop at approximately 8:30 p.m. Shortly afterward, Slater heard a loud noise and entered the main room of the shop to investigate.

¶ 6 Slater saw Askew standing in the doorway, although he did not recognize her at first. Slater asked who she was, and Askew responded, "Don't play with me. You know who I am." Askew stated, "Give me my money." Askew then punched Slater in

the face. Askew also threw various objects in the room at Slater.

¶ 7 Waleed Vaughn entered the tattoo parlor shortly after Askew. Vaughn had his hands in the pocket of his sweatshirt. Vaughn told Slater, "Just give her the money." Vaughn threatened to begin shooting if Slater did not comply.

¶ 8 Askew grabbed and pulled on the pocket of Slater's pants. The pocket ripped, and Slater's wallet and keys fell onto the floor. Slater's wallet contained his debit card, credit card, identification, and a few hundred dollars in cash. Askew took Slater's wallet and its contents, along with Slater's car keys, and left the tattoo parlor. Askew remarked "I'm going to come back and blow this shit up" while leaving. The State later arrest Askew and charged her with common law robbery, breaking and entering with intent to terrorize or injure, and a number of related charges.

¶ 9 The jury convicted Askew of these charges and the trial court sentenced Askew to several consecutive sentences. Askew timely appealed.

Analysis

¶ 10 On appeal, Askew challenges the trial court's instructions on common law robbery and the other larceny-related charges. Askew argues that the trial court erred by failing to instruct the jury that, if she acted with the intent to recover her own property rather than to steal someone else's property, she could not have been guilty of the essential elements of these crimes.

¶ 11 Askew concedes that she did not object on this basis in the trial court and we

therefore review this issue solely for plain error. "For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). "To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty." *Id.* Plain error should be "applied cautiously and only in the exceptional case" where the error seriously affects "the fairness, integrity or public reputation of judicial proceedings." *Id.*

¶ 12 Here, the trial court properly instructed the jury on all the essential elements of the charged offenses, including the requirement that Askew have the intent to take the property of another. Even if we were to assume that these instructions nevertheless were erroneous because they failed to emphasize that Askew cannot be guilty if she believed she was taking her own property, not that of another, Askew cannot meet the high burden to show plain error.

¶ 13 First, Askew has not shown that, but for the failure to provide the requested jury instructions, the jury probably would have reached a different verdict. Askew contended at trial that she was not present at Tatu Therapy on the night of the crime, and she maintains this assertion on appeal. The State had overwhelming evidence that Askew was present in the store that night.

¶ 14 Moreover, the State's evidence showed that Askew did not merely ask Slater for the $5,000 owed from a court judgment. She violently attacked Slater, forcibly stole his wallet and car keys, and threatened to "blow up" his business. In light of this evidence, Askew has not met her burden to show that, but for the lack of additional jury instructions, a jury probably would have acquitted her on the ground that she believed her acts were part of lawfully recovering her own property, as opposed to violently taking the property of another.

¶ 15 In any event, as noted above, our Supreme Court has cautioned that plain error should be found only in exceptional cases where the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. Here, the trial court properly instructed the jury that Askew could be found guilty only if she intended to take the property of another—a statement from which the jury naturally could infer that she could not be guilty if she sought to recover her own property. And Askew has not offered any explanation for why she was unable to timely raise this issue in the trial court before the court instructed the jury on all the essential elements of the charged crimes and sent them to deliberate. We are not persuaded that the facts of this case present the sort of exception circumstance that calls into question the fairness or integrity of our justice system. We therefore find no plain error in the trial court's judgments.

Conclusion

¶ 16 We find no plain error in the trial court's judgments.

NO PLAIN ERROR.

Judges DILLON and GRIFFIN concur.

Report per Rule 30(e).